

IN THE MATTER OF	:	BEFORE THE
CHARLES LEWIS, JR.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 12-013V

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DECISION AND ORDER

On September 10, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Charles Lewis, Jr., for a variance to reduce the 20-foot setback to two feet for a detached garage in an R-A-15 (Residential: Apartments) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Dylan Springmann, Esq., represented the Petitioners. Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is accessed from the west side of Rogers Avenue about 530 feet northwest of High Ridge Road and the property itself is located about 650 feet to the southwest of this access. This property is identified as Tax Map 17, Grid

24, Parcel 618 and is also known as 2938 Rogers Avenue (the Property).

2. Property Description. The 0.5-acre-Property is a rectangular-shaped site accessed from an approximately 650-foot driveway and easement area.¹ From Rogers Avenue, this driveway runs in a straight southwesterly direction, then curves to the northwest when it reaches the southerly property line. From here, the driveway extends into the property and ends in a paved area in front of the dwelling. The detached dwelling itself sits at an oblique angle to the front property line. The front portion of the Property is mostly lawn and the rear and side portions are lightly wooded. According to the variance petition supplement, the Property falls about 16 feet within the building restriction lines and the entire Property falls about 22 feet from north to south.

3. Vicinal Properties. The parcels adjoining the Property's northwesterly and easterly sides are zoned R-20 (Residential: Single Family). The southwesterly and southeasterly properties are zoned R-A-15. The property to the east is improved with a single-family detached dwelling. The Howard County Department of Public Works owns the remaining wooded and unimproved surrounding property.

4. Variance Request. The Petitioner is seeking a variance from Zoning Regulations Section 112.D.4.d.(1) to reduce the required 20-foot front setback to two feet for a 600-square foot detached garage.

5. Robert Vogel testified to the installation of rainwater gardens to the west of the dwelling and to the small size of the Property relative to neighboring properties. Petitioner

¹ See Variance Plan General Note 10.

Exhibit 1. Referring to Petitioner Exhibit 2, Mr. Vogel explained the aerial image depicts several neighboring properties with detached garages.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or

would render conformity with such restrictions unnecessarily burdensome.” Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's 0.5-acre size and topography causes practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a.(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

Even with the reduced setback, the addition would not alter the essential character of the neighborhood or district in which the lots are located. Several area dwellings in the subdivision have detached garages, so the proposed garage will be in character. Additionally, the proposed location of the garage is close to county-owned undeveloped property. Subject to the condition that the Petitioner install lawful fencing along the southeasterly and southwesterly sides of the garage to prevent encroachment into the adjoining property , the variance will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulty in complying strictly with the setback regulation arises from the Property's size and topography and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed variance is intended to accommodate a reasonably sized detached garage. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

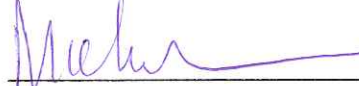
Based upon the foregoing, it is this **19th Day of September 2012** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the variance petition of Charles Lewis, Jr., for a variance to reduce the 20-foot setback to two feet for a detached garage in an R-A-15 (Residential: Apartments) Zoning District, is **GRANTED;**

Provided, however, that:

1. The Petitioner shall install lawful fencing along the southeasterly and southwesterly sides of the garage to prevent encroachment into the adjoining property.
2. The variances shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.